UNITED STATES: IN THE DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

NORFOLK MONUMENT COMPANY, INC.,	)	
Plaintiff,	)	Civil Action
vs.	)	File
	)	No. 5331
WOODLAWN MEMORIAL GARDENS, INCORPORATED, ET ALS,	)	
Defendants.	)	

AMENDED MOTION

The defendant, Roosevelt Memorial Park and Cemetery Corporation, moves the Court to dismiss the Complaint for failure of the plaintiff to state a cause of action upon which relief could be granted; or, in the alternative, to award to the defendant, Roosevelt Memorial Park and Cemetery Corporation, a summary judgment upon said cause of action.

(1) The defendant avers that the Complaint fails to set out with particularity that the defendant interfered with or damaged any property rights of the plaintiff.

(2) The defendant avers that there is no allegation of public injury or harmful effect to the public interest.

(3) The defendant avers that the acts charged are incapable of constituting a violation of Sections 1 and 2

of the Sherman Act and, therefore, fail to state a cause of action.

(4) The defendant, Roosevelt Memorial Park and Cemetery Corporation, avers that the alleged offenses in violation of Section 1 of the Sherman Act charged by plaintiff in its Complaint are contrary to fact and totally without merit. The defendant, Roosevelt Memorial Park and Cemetery Corporation, has on no occasion ever, in any way, combined, conspired, or agreed, directly or indirectly, expressly or by implication, with either Jas. H. Matthews and Co. of Pennsylvania, or Jas. H. Matthews and Co. of Virginia, or any of the alleged co-conspirators, Woodlawn Memorial Gardens, Incorporated, Rosewood Memorial Park, Incorporated, Greenlawn Cemetery Park Corporation, or Princess Anne Memorial Park, Incorporated, to restrain the sale and distribution of burial markers in violation of Section 1 of the Sherman Act. The defendant, Roosevelt Memorial Park and Cemetery Corporation, further avers that it has on no occasion ever purchased or had purchased any marker from Jas. H. Matthews and Co. of Pennsylvania, or Jas. H. Matthews and Co. of Virginia.

(5) The defendant, Roosevelt Memorial Park and Cemetery Corporation, avers that the alleged offenses in violation of Section 2 of the Sherman Act charged by the plaintiff in its Complaint are contrary to fact and totally without merit. The defendant, Roosevelt Memorial Park and Cemetery Corporation, has on no occasion ever combined, conspired, or in any way agreed, directly or indirectly, expressly or by implication, with either Jas H. Matthews and Co. of Pennsylvania, or Jas. H. Matthews and Co. of Virginia, or any of the

alleged co-conspirators, Woodlawn, Rosewood, Greenlawn, or Princess Anne, to monopolize or to attempt to monopolize interstate trade or commerce in the manufacture, sale, or distribution of burial markers in violation of Section 2 of the Sherman Act. The defendant further avers that it has on recent occasion, and on numerous other prior occasions, installed burial markers sold by the plaintiff, and that it has never refused the plaintiff or any other monument dealer to install grave markers in its cemetery, although not obligated to do so.

(6) The defendant, Roosevelt Memorial Park and Cemetery Corporation, avers that since its inception and without interruption it has operated solely and independently and not in concert with any other concern as a local memorial park and that its activities are clearly and intensely local and fall without the ambit of the Sherman Anti-Trust Act (see *Lawson* v. *Woodmere*, 217 F. 2d 148).

(7) The defendant, Roosevelt Memorial Park and Cemetery Corporation, avers that since its inception and without interruption it has operated solely and independently and not in concert with any other concern as a local memorial park, whose principal clientel is of the Negroid race, and that it has had no occasion in any way to conspire, combine, agree, or have any dealings whatsoever with the alleged conspirators, Woodlawn, Rosewood, Greenlawn, or Princess Anne, whose clientel is principally of the Caucasian race.

WHEREFORE, for the reasons set out above, and on the affidavits filed herewith, the defendant moves the Court to enter an Order dismissing the Complaint

and awarding to the defendant reasonable attorney's fees in defense of this spurious litigation.

ROOSEVELT MEMORIAL PARK
AND CEMETERY CORPORATION

/s/By Bernard Glasser
Counsel

Bernard Glasser, p.d.
504 Plaza One
Norfolk 10, Virginia

I certify that a copy of the foregoing Amended Motion was sent to the following: Fine, Fine, Legum, Schwan & Fine, Law Building, Norfolk, Virginia, counsel for the plaintiff, Norfolk Monument Company, Inc.; Cooper, Spong & Davis, 403 Court Street, Portsmouth, Virginia, counsel for the defendant, Greenlawn Cemetery Park Corporation; Kellam & Kellam, Board of Trade Building, Norfolk, Virginia, counsel for the defendant, Woodlawn Memorial Gardens, Incorporated; and Worthington, White & Harper, Plaza One, Norfolk, Virginia, counsel for the defendants, Rosewood Memorial Park, Incorporated, and Princess Anne Memorial Park, Incorporated, and Robert H. Patterson, Jr., Mutual Building, Richmond, Virginia, counsel for Jas. H. Matthews & Co. of Penn. and Virginia.

/s/Bernard Glasser

5/3/66

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Plaintiff,	)	
	)	Civil Action
vs.	)	File
	)	No. 5331
WOODLAWN MEMORIAL GARDENS, INCORPORATED, ET ALS,	)	
Defendants.	)	

AMENDED AFFIDAVIT

THIS DAY came Eugene P. Wadsworth, who being first duly sworn, doth depose and say that he is President and Director of Roosevelt Memorial Park and Cemetery Corporation, one of the defendants named in the foregoing complaint, and doth depose and say the following:

(1) That neither Roosevelt Memorial Park and Cemetery Corporation, nor any of its officers, directors, employees, or authorized agents have ever, in any way, conspired, combined, or agreed, either directly, or indirectly, expressly or by implication, with Jas. H. Matthews and Co. of Pennsylvania or Jas. H. Matthews and Co. of Virginia to purchase, or have purchased, bronze grave markers from the said Matthews of Pennsylvania or Virginia, for sale or installation in its cemetery; nor has Roosevelt Memorial Park and Cemetery Corpora-

tion, or any of its constituents aforementioned, ever performed any act, or made any statement, directly or indirectly, expressly or by implication, in furtherance of any such alleged conspiracy, combination, or agreement to in any way prevent, restrict, or discourage sales of markers by the plaintiff dealer, nor has Roosevelt Memorial Park and Cemetery Corporation, or any of its authorized constituents aforementioned ever performed any act, or expressed, either directly or by implication, any desire or intention to restrain or monopolize the interstate or intrastate trade or commerce in the manufacture, price, sale or distribution of any burial markers.

(2) That neither Roosevelt Memorial Park and Cemetery Corporation, nor any of its officers, directors, employees, or authorized agents have, in fact, ever purchased any bronze burial markers whatsoever, either directly or indirectly, from Jas. H. Matthews and Co. of Pennsylvania or Jas. H. Matthews and Co. of Virginia.

(3) That neither Roosevelt Memorial Park and Cemetery Corporation, nor any of its officers, directors, employees, or authorized agents have ever, in any way, conspired, combined, or agreed with any of the alleged co-conspirators, Woodlawn Memorial Gardens, Incorporated, Rosewood Memorial Park, Incorporated, Greenlawn Cemetery Park Corporation, Princess Anne Memorial Park, Incorporated, or any of their respective officers, directors, employees, or authorized agents, either directly or indirectly, expressly or by implication, to in any way restrain, monopolize, or even attempt to monopolize the interstate or intrastate trade or commerce in the manufacture, price, sale, or distribution of any burial markers, either those of Jas. H. Matthews and Co. of Pennsylvania or those of Jas. H. Matthews

and Co. of Virginia, or, in fact, those of any other manufacturer, distributor, or dealer.

(4) That Roosevelt Memorial Park and Cemetery Corporation has since its inception, and without interruption, operated solely and independently and not in concert with any other concern as a local memorial park, and has on no occasion adopted, or ever in any way conspired, combined, or agreed to adopt, either directly or indirectly, expressly or by implication, any restrictive device, regulation, or rule prepared or suggested by Matthews of Pennsylvania and Matthews of Virginia, or any of the alleged co-conspirators, Woodlawn Memorial Gardens, Incorporated, Rosewood Memorial Park, Incorporated, Greenlawn Cemetery Park Corporation, or Princess Anne Memorial Park, Incorporated, for the purpose of preventing, restricting, or discouraging sales of markers by the plaintiff or any other marker dealer for installation in its cemetery.

(5) That Roosevelt Memorial Park and Cemetery Corporation has, since its inception and without interruption, operated solely and independently and not in concert with any other concern as a local cemetery and/or memorial park, whose principal clientel is of the Negro race, and has had no occasion to conspire, combine, agree, or in any way deal with the alleged co-conspirators, Woodlawn, Rosewood, Greenlawn, or Princess Anne, whose clientel is principally of the Caucasian race.

(6) That Roosevelt Memorial Park and Cemetery Corporation has, since its inception and without interruption, never refused to install for the plaintiff or any other marker dealer grave markers in its cemetery; and,

:rk and Cemetery Corpo-
: on numerous other occa-
ld by the plaintiff in its

on the aforementioned,
l Cemetery Corporation
nents in the Complaint
Sections 1 and 2 of the
without evidence to sup-

NE P. WADSWORTH

l before me this 3rd day

CHARD S. GLASSER
otary Public

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IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Norfolk Division

NORFOLK MONUMENT COMPANY, INC., — Civil Action No. 5331

Plaintiff

v.

WOODLAWN MEMORIAL GARDENS, INCORPORATED, et al,

Defendants

AFFIDAVIT OF CHARLIE C. GREGORY IN OPPOSITION TO AMENDED AFFIDAVIT OF EUGENE P. WADSWORTH

STATE OF VIRGINIA,
CITY OF NORFOLK, to-wit:

This day personally appeared before me, Nancy M. Brown, a Notary Public in and for the City and State aforesaid, whose commission expires on the 21st day of November, 1967, Charlie C. Gregory, the undersigned, who being first duly sworn, doth depose and say that he is President of Norfolk Monument Company, Inc., the plaintiff, and does depose and say the following:

1. That he learned from Mr. Charles Castle, formerly General Manager of Rosewood Memorial Park, Incorporated, that in the spring and summer of 1965, officials of Rosewood Memorial Park, Incorporated met

with officials of Roosevelt Memorial Park and Cemetery Corporation, and, among other matters, it was contemplated that Rosewood Memorial Park, Incorporated would take over the operation of Roosevelt Memorial Park and Cemetery Corporation.

2. That under date of May 20, 1964, plaintiff received from counsel for Roosevelt Memorial Park and Cemetery Corporation a letter as follows:

> "I represent Roosevelt Memorial Park and Cemetery Corporation, who has advised that you are selling bronze markers to be installed in its cemetery on Dozier Corner Road in the City of Chesapeake, Virginia.
>
> "In accordance with the by-laws, rules, and regulations of the cemetery, all such markers must meet the standards set by the cemetery and be approved by them. In addition thereto, there is a charge of ten cents per square inch for the installation and maintenance for such bronze markers installed and a required payment of $10.00 per marker for purpetual care.
>
> "This information is being forwarded to you so that your company might be fully advised as to the rules and regulations of this cemetery purtaining to bronze markers."

3. That Roosevelt Memorial Park and Cemetery Corporation, like the other defendants, will not permit this plaintiff, or any other monument dealers to install bronze markers in its cemetery. In addition, the prices charged by Roosevelt Memorial Park and Cemetery

Corporation for installation are excessive. Roosevelt charges $43.60 for installation of a single and $71.60 for a double bronze marker, whereas the plaintiff could install the same for no more than $5.00.

4. In addition, according to information supplied by the owner of Hairston's Funeral Home of Virginia Beach, Virginia, Roosevelt Memorial Park and Cemetery Corporation only charges Hairston's Funeral Home the sum of $15.00 for the installation of the single bronze marker, whereas it charges this plaintiff $43.60.

5. Roosevelt Memorial Park and Cemetery Corporation, like the other defendants, has rules and regulations requiring all markers to be installed by the cemetery, charge excessive fees for installation of said markers, try to discourage the sale of markers by the plaintiff and other monument dealers by taking an excessively long time in which to erect said markers. For example, this plaintiff sold a bronze marker for Bettie Ann Grimstead to be installed by Roosevelt Memorial Park and Cemetery Corporation, which took a long time to install the marker, and a representative of the plaintiff corporation had to bring to the attention of the President of Roosevelt Memorial Park and Cemetery Corporation that the bronze marker had not been installed, and, in addition, Roosevelt Memorial Park and Cemetery Corporation permitted nails to remain on the marker, and the nails were rusting it.

6. Veterans of the United States Government are buried in Roosevelt Memorial Park and Cemetery Corporation. The United States Government ships bronze markers from out of the State of Virginia to the Tidewater area to mark the final resting place of the veterans; all of which being in interstate commerce.

7. That even with the filing of this suit, Roosevelt is still attempting to discourage its lot owners from purchasing bronze markers from plaintiff. On April 24, 1966, plaintiff delivered to Roosevelt Memorial Park and Cemetery Corporation a bronze marker, and a check for the installation fee required by Roosevelt Memorial Park and Cemetery Corporation, to be placed on the grave of Garrett Williams, Sr., the said marker having been purchased from plaintiff by Marvenia T. Williams of this City. As of May 24, 1966, Roosevelt Memorial Park and Cemetery Corporation has failed to install said marker, and its Mr. Woodall told the purchaser that's what she got for buying from Norfolk Monument Company.

8. That many of the statements in the Amended Affidavit of Eugene P. Wadsworth are conclusions rather than facts.

/s/CHARLIE C. GREGORY

Subscribed and sworn to before me this 24th day of May, 1966.

/s/NANCY M. BROWN
Notary Public

HOWARD I. LEGUM
Fine, Fine, Legum, Schwan & Fine, p.q.
720 Law Building
Norfolk, Virginia
nmb

I hereby certify that true copies of the foregoing Affidavit of Charlie C. Gregory in Opposition to Amended Affidavit of Eugene P. Wadsworth were mailed to Messrs. Cooper, Spong & Davis, 403 Court

Street, Portsmouth, Virginia, counsel of record for defendant, Greenlawn Cemetery Park Corporation; Messrs. Kellam & Kellam, Board of Trade Building, Norfolk, Virginia, counsel of record for defendant, Woodlawn Memorial Gardens, Incorporated; Messrs. Worthington, White & Harper, One Main Plaza, Norfolk, Virginia, counsel of record for defendants, Rosewood Memorial Park, Incorporated and Princess Anne Memorial Park, Incorporated; Robert H. Patterson, Jr., Esquire, Mutual Building, Richmond, Virginia, counsel of record for defendants, Jas. H. Matthews & Co. of Virginia and Jas. H. Matthews & Co.; and to Bernard Glasser, Esquire, One Main Plaza, Norfolk, Virginia, counsel of record for defendant, Roosevelt Memorial Park and Cemetery Corporation, this 24th day of May, 1966.

/s/HOWARD I. LEGUM
Of Counsel

CIVIL ACTION NO. 5331
NORFOLK MONUMENT COMPANY, INC.,
Plaintiff,

v.

WOODLAWN MEMORIAL GARDENS, INCORPORATED, et als,
Defendants.

ORDER GRANTING SUMMARY JUDGMENT FOR ROOSEVELT MEMORIAL PARK AND CEMETERY CORPORATION

This cause came on this 27th day of October, 1966, to be heard upon the Amended Motion of Roosevelt Memorial Park and Cemetery Corporation filed May 3, 1966, to dismiss the plaintiff's action for its failure to state a claim upon which relief can be granted against the said Roosevelt Memorial Park and Cemetery Corporation, or, in the alternative, to grant summary judgment, and an Amended Affidavit in support thereof having been presented, and which said Motion is treated as a Motion for Summary Judgment, and the plaintiff having been given ample opportunity to present all material pertinent to such Motion,

And it appearing from the pleadings together with the Amended Affidavit of Eugene P. Wadsworth dated the 3rd day of May, 1966, and the counter-affidavit of Charlie C. Gregory (filed May 25, 1966), that the said defendant, Roosevelt Memorial Park and Cemetery Corporation, has not been guilty of the offenses charged in the Complaint, and that the plaintiff in its opposing Affidavit has set forth no specific facts

as required by Rule 56 (c) showing that there is a genuine issue for trial, as provided by Rule 56 of the Federal Rules of Civil Procedure, to support its conclusory and unsworn allegations, the Court is of the opinion that the defendant, Roosevelt Memorial Park and Cemetery Corporation, is entitled to a judgment as a matter of law.

WHEREFORE, the motion of the defendant, Roosevelt Memorial Park and Cemetery Corporation, for a Summary Judgment is hereby sustained, and judgment is granted in its favor.

At Norfolk, Virginia, on the
28th day of October, 1966.

WALTER E. HOFFMAN
United States District Judge

TESTIMONY OF CHARLIE C. GREGORY

(7/19/66 tr. 3)

CHARLIE C. GREGORY, having been first duly sworn, testified as follows:

(tr. 31)

BY MR. WHITE:

Q. At least one of the defendants denies that it ever purchased any bronze from Matthews.

A. I have heard that, yes, sir. I heard that they had denied that, yes, sir.

Q. Do you take exception to that denial?

A. No.

Q. You don't know any different, do you?

A. I would not say they are lying, no, sir.

Q. So would I be correct in saying that again your evidence of the conspiracy of these defendants to buy their exclusive requirements from Matthews is circumstantially based on the fact that you see a lot of Matthews' bronze in the cemeteries?

A. Yes, sir, that is correct.

Q. Do you deny that they all buy a substantial amount of bronze from Gorham?

A. Do I deny that?

Q. Yes.

A. No, I don't deny that.

* * * * *

(tr. 59)

BY MR. GLASSER:

Q. Mr. Gregory, what evidence do you have that Roosevelt combined and conspired or agreed directly or indirectly with James H. Matthews of Pennsylvania or of

(tr. 60)

Virginia to restrain or to monopolize the sale or distribution of burial markers in the cemetery?

A. Nothing in writing.

Q. Do you have any evidence?

A. No, sir, except as to circumstantial evidence.

Q. There is no evidence you can produce to the court that Roosevelt ever had any dealings with Matthews of Virginia or Pennsylvania, is there?

A. That is correct.

Q. When you set forth in your complaint that there are no grave markers installed in Roosevelt Memorial Park other than by Matthews, that is erroneous, is it not?

MR. LEGUM: Where are you reading from?

MR. GLASSER: No. 19.

MR. LEGUM: There is going to be added the word "substantially." I mentioned that.

MR. GLASSER: Let the witness testify if you will please, sir.

A. My answer would be "substantially," rather than saying that no markers were installed.

Q. Did you find any markers at all of Matthews installed in Roosevelt Memorial Park?

A. They appeared to be those of Matthews to me.

(tr. 61)

Q. What made them appear to be those of Matthews to you?

A. I was familiar with the product.

Q. Would it surprise you to learn that Roosevelt Memorial Park has never purchased the first bronze marker from Matthews?

A. It was a surprise when I read that.

Q. You are not in a position to dispute that, are you?

A. No, sir.

* * * * *

(tr. 66)

Q. Have you any evidence that they ever required of you the proof of the alloy content of your markers?

A. I don't know that I have anything in writing at all along that line from this particular park.

Q. Do you have any evidence that they ever required of you any alloy content?

A. I don't recall that they have ever brought that out.

RULE 56 OF THE FEDERAL RULES OF CIVIL PROCEDURE AS AMENDED

(a) *For Claimant.* A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. As amended Dec. 27, 1946, eff. March 19, 1948.

(b) *For Defending Party.* A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) *Motion and Proceedings Thereon.* The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hear-

ing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. As amended Dec. 27, 1946, eff. March 19, 1948; Jan. 21, 1963, eff. July 1, 1963.

(d) *Case Not Fully Adjudicated on Motion.* If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) *Form of Affidavits; Further Testimony; Defense Required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall

be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him. As amended Jan. 21, 1963, eff. July 1, 1963.

(f) *When Affidavits are Unavailable.* Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) *Affidavits Made in Bad Faith.* Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

SHERMAN ACT PROVISIONS

Section 1 of the Sherman Act, 26 Stat. 209, 15 United States Code, Section 1, in pertinent part, reads as follows:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. . . ."

Section 2 of the Sherman Act, of 26 Stat. 209, 15 United States Code, Section 2, in pertinent part, reads as follows:

> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, . . ."

28 U.S.C.A. 1257, STATE COURTS; APPEAL; CERTIORARI

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties of law of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.